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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE S. JAMES OTERO, U.S. DISTRICT JUDGE

CORY SPENCER, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No.
	)	CV16-02129 SJO
	)	
LUNADA BAY BROTHERS, et al.,	)	
	)	
Defendants.	)	
_____	)	

REPORTER'S TRANSCRIPT OF  
MANDATORY SCHEDULING CONFERENCE  
MONDAY, AUGUST 29, 2016  
8:43 A.M.  
LOS ANGELES, CALIFORNIA

\_\_\_\_\_  
CAROL JEAN ZURBORG, CSR NO. 7921, CCRR  
FEDERAL OFFICIAL COURT REPORTER  
312 NORTH SPRING STREET, ROOM 414  
LOS ANGELES, CALIFORNIA 90012  
(213) 894-3539

**APPEARANCES OF COUNSEL:**

**FOR THE PLAINTIFFS:**

HANSON BRIDGETT LLP  
BY: KURT A. FRANKLIN  
Attorney at Law  
425 Market Street, 26th Floor  
San Francisco, California 94105  
(415) 777-3200

OTTEN LAW PC  
BY: VICTOR OTTEN  
Attorney at Law  
3620 Pacific Coast Highway, Suite 100  
Torrance, California 90505  
(310) 378-8533

**FOR THE DEFENDANT SANG LEE:**

LEWIS BRISBOIS BISGAARD & SMITH LLP  
BY: TERA A. LUTZ  
Attorney at Law  
633 West 5th Street, Suite 4000  
Los Angeles, California 90071  
(213) 250-1800

**FOR THE DEFENDANT MICHAEL RAE PAPAYANS:**

HAVEN LAW  
BY: PETER T. HAVEN  
Attorney at Law  
1230 Rosecrans Avenue  
Manhattan Beach, California 90266  
(213) 842-4617

**FOR THE DEFENDANTS ANGELO FERRARA AND N.F.:**

LAW OFFICES OF MARK C. FIELDS APC  
BY: MARK FIELDS  
Attorney at Law  
333 South Hope Street, Suite 3500  
Los Angeles, California 90071  
(213) 617-5225

**APPEARANCES OF COUNSEL (Continued):**

**FOR THE DEFENDANTS CITY OF PALOS VERDES ESTATES AND  
JEFF KEPLEY:**

KUTAK ROCK LLP  
BY: EDWIN J. RICHARDS, JR.  
Attorney at Law  
5 Park Plaza, Suite 1500  
Irvine, California 92614  
(949) 417-0999

**FOR THE DEFENDANT BRANT BLAKEMAN:**

VEATCH CARLSON, LLP  
BY: JOHN P. WORGUL  
BY: RICHARD P. DIEFFENBACH  
Attorneys at Law  
1055 Wilshire Boulevard, 11th Floor  
Los Angeles, California 90017  
(213) 381-2861

**FOR THE DEFENDANTS FRANK FERRARA AND CHARLIE FERRARA:**

BREMER WHYTE BROWN & O'MEARA LLP  
BY: WILLIAM LOCKE  
Attorney at Law  
21271 Burbank Boulevard, Suite 110  
Woodland Hills, California 91367  
(818) 712-9800

1                   LOS ANGELES, CALIFORNIA; MONDAY, AUGUST 29, 2016

2                                   8:43 A.M.

3                                   --oOo--

4                   THE COURTROOM DEPUTY:   Calling Item No. 5:   Case  
5   number CV 16-02129 SJO; Cory Spencer, et al., versus Lunada Bay  
6   Boys, et al.

7                   Counsel, would you please come forward and state your  
8   appearance.

9                   Your Honor, the clerk has received an e-mail from an  
10   attorney by the name of William Locke, L-o-c-k-e, who indicates  
11   he is going to be representing two defendants, Frank Ferrara  
12   and Charlie Ferrara, who are not currently represented by  
13   counsel, formerly represented by counsel.   He is running late.  
14   He is on the freeway also.

15                  MR. FRANKLIN:   Your Honor, Kurt Franklin on behalf  
16   of the plaintiffs.

17                  MR. OTTEN:   Good morning, Your Honor.   Vic Otten on  
18   behalf of the plaintiffs.

19                  MS. LUTZ:   Good morning, Your Honor.   Tera Lutz on  
20   behalf of defendant Sang Lee.

21                  MR. FIELDS:   Good morning, Your Honor.   Mark Fields  
22   for Angelo Ferrara and N.F.

23                  MR. HAVEN:   Good morning, Your Honor.   Peter Haven  
24   on behalf of Defendant Michael Papayans.

25                  MR. RICHARDS:   Ed Richards, Your Honor, on behalf of

1 the City of Palos Verdes Estates and Chief Jeff Kepley.

2 MR. DIEFFENBACH: Good morning, Your Honor. I'm  
3 Richard Dieffenbach on behalf of Brant Blakeman, defendant.

4 MR. WORGUL: Good morning, Your Honor. John Worgul  
5 on behalf of Brant Blakeman.

6 THE COURT: We will start with the plaintiffs again.  
7 I have Mr. Victor Otten, yes?

8 MR. OTTEN: Yes, Your Honor.

9 THE COURT: Then I didn't get the appearance of the  
10 first counsel.

11 MR. FRANKLIN: It's Kurt, K-u-r-t, Franklin, Hanson  
12 Bridgett law firm.

13 THE COURT: Kurt Franklin?

14 MR. FRANKLIN: Franklin.

15 THE COURT: Sacramento?

16 MR. FRANKLIN: San Francisco.

17 THE COURT: And you are trial counsel?

18 MR. FRANKLIN: Correct.

19 THE COURT: And, Mr. Otten, you're trial counsel  
20 also?

21 MR. OTTEN: Yes, Your Honor.

22 THE COURT: And then I assume, for the appearing  
23 defendants today, I have all the trial lawyers who will try the  
24 case.

25 MS. LUTZ: Your Honor, that's not necessarily

1 correct. I'm not trial counsel, but just for the record, I am  
2 on the trial team, and I'm ready.

3 THE COURT: Read the rules. You're in federal  
4 court.

5 MS. LUTZ: Yes, Your Honor.

6 THE COURT: Trial counsel needs to be here.

7 MS. LUTZ: One is out of the country, Your Honor.  
8 The other is currently in trial.

9 THE COURT: Read the rules.  
10 You can have a seat.

11 Okay. The matter is here for a scheduling conference, and  
12 the parties have filed, I think, a thorough proposed 26 -- or a  
13 thorough report discussing several issues. Counsel for  
14 plaintiff has taken the position that this is a complex matter  
15 and that the manual for complex litigation should be used.

16 Let's see. Since I have been on the federal court, I have  
17 handled 113 class action cases. We handle -- I'm part of the  
18 patent program, and I have handled patent cases involving 77  
19 defendants, and I have never used the complex manual.

20 MR. FRANKLIN: Understood, Your Honor.

21 THE COURT: So this is not a complex case. There's  
22 certain complexities in the case, but it doesn't qualify as a  
23 complex case, so I would agree with the defendants that the  
24 manual should not be employed in this case.

25 The parties have requested the E-discovery procedures and

1 rules in Northern California, the practices should be employed  
2 here. And it appears that there's an agreement that those  
3 E-discovery practices would be appropriate for implementation  
4 in this case. I see no reason not to do that in light of the  
5 agreement of counsel, with one exception. The Northern rules  
6 reference that disputes should be resolved by the Court, and in  
7 the Central District, discovery disputes are resolved by the  
8 magistrate judge. So any discovery disputes would be referred  
9 to the magistrate judge.

10 The parties have requested clarification of the Court's  
11 July 11th, 2016 dismissal order. In the dismissal order the  
12 Court dismissed plaintiff's Coastal Act claim against the City  
13 defendants, and the parties have requested clarification as to  
14 whether the Court's order applies to all defendants.

15 In reviewing the order, the July 11th order, the motion  
16 was brought only on behalf of the City defendants, City of  
17 Palos Verdes Estates, and then the police chief. There was no  
18 motion by any of the other defendants to join in that motion.  
19 And in the Court's order -- in the Court's July 11th order,  
20 quoting from the order of the Court, accordingly dismisses  
21 plaintiff's fifth cause of action for violation of California  
22 Coastal Act as to the City defendants without leave to amend.

23 So I think the order clearly references that it only  
24 applies to -- that it only applies to the City defendants.  
25 That being said, I think that the rationale would also apply to

1 the other defendants. So you can enter into an agreement or  
2 stipulation, or if the parties choose, the defendants can --  
3 the individual defendants can file a motion for judgment of the  
4 pleadings if they have already answered.

5 How do you wish to proceed on that? Do you really need  
6 the defendants to formally move in light of the Court's ruling?

7 MR. FRANKLIN: No, Your Honor.

8 THE COURT: Then it would be stipulated that it  
9 would apply to all defendants.

10 Is that agreed by all appearing counsel?

11 (Multiple defense attorneys said "Yes.")

12 THE COURT: In reference to trial, I time-manage  
13 cases. The time estimate is 20 days. It's not going to be a  
14 20 days case. In the most complex cases that we handle here, I  
15 give 12 hours each side, 12-1/2 hours each side, which is a  
16 long period of time. And it's always subject to modification  
17 if there are certain issues that require some -- the case --  
18 the trial time to be modified, but we can discuss that more at  
19 the pretrial conference.

20 What's the status of the state court action?

21 MR. FRANKLIN: Filed but not served, Your Honor.

22 THE COURT: And do you intend to serve it?

23 MR. FRANKLIN: Well, we were waiting to learn more  
24 today, so yes, we would plan to serve that at some point.

25 THE COURT: So we are going to have companion -- we



1 are going to have parallel litigation in state court and then  
2 one in federal court.

3 MR. OTTEN: Yes. The state is just Coastal Act,  
4 Your Honor.

5 THE COURT: And has the coastal commission weighed  
6 in at all? What's the status of their interests in the case?

7 MR. FRANKLIN: They are very interested in the case.  
8 I was on the phone with their lead inhouse attorney last week  
9 and their lead supervisor in terms of enforcement. In terms of  
10 participating in -- attempting to participate in the federal  
11 case, which it sounds like that may not be an opportunity, but  
12 in the state case, they have to go before their board in closed  
13 session to take any action like that. So I don't want to  
14 misquote them. They're interested in filing in this case, and  
15 they're evaluating how they might participate.

16 THE COURT: And then what is the status as to Frank  
17 Ferrara and then Charlie Ferrara? Have they been served?

18 MR. FRANKLIN: We made effort to serve each of them,  
19 both with personal service. Mr. Otten has sent out process  
20 servers to each location. We have sent out mail and UPS notice  
21 of this hearing, and we just recently last week -- we know we  
22 would need the Court's permission for substitute service, but  
23 we mailed a copy of the summons and complaint too. They have  
24 not been served in theory, but we served comments, we read  
25 comments about the lawsuit in the paper, but --

1 THE COURT: I would think you could locate them at  
2 Lunada Bay.

3 MR. LOCKE: Good morning, Your Honor. William  
4 Locke, specially appearing for Frank and Charlie Ferrara.

5 THE COURT: You are on the wrong side.

6 MR. LOCKE: There is no more seating over there. I  
7 apologize for my tardiness.

8 THE COURT: You arrived at the right time. I was  
9 inquiring as to the status -- are they brothers?

10 MR. LOCKE: Your Honor, to tell you the truth, we  
11 got the case last week, so we haven't even made contact with  
12 our clients.

13 THE COURT: But is Frank and Charlie Ferrara, are  
14 they brothers?

15 MR. LOCKE: I believe they are father and son.

16 THE COURT: And then, Counsel, you are here for what  
17 purpose?

18 MR. LOCKE: Specially appearing.

19 THE COURT: There is no such type of appearance in  
20 federal court. So you are either representing them, or you are  
21 not representing them.

22 MR. LOCKE: Okay. We are representing them. And  
23 the answer will be on file tomorrow.

24 THE COURT: So you intend to answer the complaints?

25 MR. LOCKE: Yes, Your Honor.

1 THE COURT: Then how much time do you need to  
2 answer?

3 MR. LOCKE: By the end of the week.

4 THE COURT: By the end of the week. Okay.

5 Then is Frank the father, do you know?

6 MR. FRANKLIN: Yes, he is.

7 THE COURT: Frank Ferara and Charlie Ferara are now  
8 represented. Counsel has made an appearance. And then the  
9 Ferraras will have until September 2nd -- I think that's  
10 Friday -- to file and serve their answer.

11 Do you intend to answer?

12 MR. LOCKE: Yes, Your Honor.

13 THE COURT: To file and serve their answer.

14 And then in reference to -- we need a date for the filing  
15 of the motion for class cert. We have a 90-day rule here in  
16 the federal court in the Central District, but the plaintiff  
17 has filed a motion to appear on or before December 31st.

18 MR. FRANKLIN: Yes, Your Honor.

19 THE COURT: And that appears to be -- it's not  
20 totally consistent with the local rule, but it's an ambitious,  
21 I think, date. Does any counsel wish to be heard on that?

22 I would impose that as an order. The filing of the motion  
23 for class cert, 12/31/2016; opposition 14 days thereafter; and  
24 then plaintiff's reply 7 days thereafter; and then a hearing in  
25 February of 2017. So let's -- 12/31/2016.

1 THE COURTROOM DEPUTY: Your Honor, that's a  
2 Saturday. They could still file it on a Saturday unless you  
3 want it on a Friday.

4 THE COURT: Let's do it on the Friday.

5 THE COURTROOM DEPUTY: Filing of the class cert will  
6 be Friday, December the 30th, 2016.

7 THE COURT: By -- let's make that by 4:00.

8 THE COURTROOM DEPUTY: And then opposition would be  
9 filed by Friday, January the 13th, 2017.

10 How much time for reply?

11 THE COURT: Seven days to reply.

12 THE COURTROOM DEPUTY: So that would be Friday,  
13 January the 20th, 2017.

14 How much time do you want a hearing?

15 THE COURT: They have requested a hearing in  
16 February of 2017, so --

17 THE COURTROOM DEPUTY: Right, but for the Court --

18 THE COURT: At least two weeks after the reply.

19 THE COURTROOM DEPUTY: I will set it for Tuesday,  
20 February the 21st, 2017, at 9:00 a.m. -- 10:00 a.m.

21 THE COURT: Does that work?

22 MR. FRANKLIN: Works for us, Your Honor.

23 UNIDENTIFIED COUNSEL: Yes, Your Honor.

24 THE COURT: And then in terms of the trial date, the  
25 plaintiffs have proposed a trial in, let's see, 2017. Was it

1 September 2017?

2 MR. FRANKLIN: Yes, Your Honor.

3 THE COURT: So that you would not lose the surfing  
4 season. And with all due respect to the surfing season, the  
5 Court has to balance the plaintiffs' concerns here with the  
6 defendants' right to properly prepare the case.

7 MR. FRANKLIN: Understood, Your Honor.

8 THE COURT: So we are not going to be able to set it  
9 in September, but at the same time, we are not going to go into  
10 2018. So I'm looking at a date in -- probably first date in  
11 November of 2017.

12 THE COURTROOM DEPUTY: Okay. Your Honor, we have  
13 Tuesday, November the 7th, 2017, at 9:00 a.m.

14 THE COURT: How does that work on your respective  
15 calendars? Work?

16 MR. FRANKLIN: Works, Your Honor.

17 THE COURT: And then let's go to the pretrial, and  
18 let's get a pretrial two weeks prior to the trial date.

19 THE COURTROOM DEPUTY: Yes, Your Honor. That will  
20 be Monday, October the 23rd, 2017, at 9:00 a.m.

21 THE COURT: Motion hearing cutoff. Let's get  
22 that -- rather than calculating it from the trial date, let's  
23 calculate from the pretrial.

24 THE COURTROOM DEPUTY: Okay. So that will be  
25 Monday, August the 21st, 2017, at 10:00 a.m.

1 THE COURT: Discovery cutoff.

2 THE COURTROOM DEPUTY: That will be Monday, August  
3 the 7th, 2017.

4 THE COURT: In terms of cooperation amongst the  
5 defendants, are there -- to the extent there's common issues  
6 that would apply to all or most of the defendants, I would  
7 expect that counsel should meet and confer on those issues and  
8 then bring one motion jointly filed by all concerned  
9 defendants. And then to the extent you have separate issues,  
10 then we can hear or handle motions involving issues that are  
11 discrete to the respective defendants.

12 So has there been much coordination between the  
13 defendants?

14 Yes?

15 And then in terms of settlement, what is your pleasure in  
16 terms of settlement? Look, I think you should probably think  
17 about stipulating or agreeing to a private settlement officer,  
18 and I would suggest a retired federal district court judge, and  
19 you select.

20 MR. FRANKLIN: We have selected magistrate --  
21 retired magistrate James Larson, and I think defense suggested  
22 someone else.

23 THE COURT: From the Northern District?

24 MR. FRANKLIN: Yes.

25 THE COURT: That's fine. Same thing, very skilled.

1 And if everyone would agree -- will the defendants agree to  
2 Judge Larson?

3 MR. RICHARDS: If I may address the Court.

4 THE COURT: Do you need more time to consider?

5 MR. RICHARDS: We are in agreement. We have met and  
6 conferred. We have agreed to go to private ADR. We are not in  
7 agreement with regard to who we will use.

8 THE COURT: Okay. Anything further?

9 MR. FRANKLIN: With respect to -- can we assume that  
10 the ordinary rules of civil procedure would apply in terms of  
11 limits on numbers of depositions and that type of thing? That  
12 was in our pretrial, so --

13 THE COURT: Yes. The standard -- the federal rules  
14 would apply in terms of numbers, and if there's stipulations to  
15 extend that, and everyone agrees, you can do that.

16 I think that covers most of it.

17 MR. FRANKLIN: Yeah. Of particular --

18 THE COURT: If you have discovery disputes and you  
19 think you need more discovery or less discovery, that dispute  
20 would be referred to the magistrate judge.

21 MR. FRANKLIN: Understood. So if we are using the  
22 FRCP as a baseline, we are okay with that. If the parties want  
23 to go outside of that, we understand how to do that.

24 THE COURT: Yes. You can do that by stipulation.  
25 And if you cannot stipulate, then it's resolved by the federal

1 magistrate judge.

2 MR. FRANKLIN: Understood, Your Honor.

3 THE COURT: Okay. And I think -- are there going to  
4 be other defendants that are going to be brought in?

5 MR. FRANKLIN: Two other defendants, Your Honor:  
6 Mr. David Mellow and Mr. Mark Griep, who we plan to substitute  
7 in for a Doe if we are permitted to do so.

8 THE COURT: That's David Mellow and then Mark  
9 G-r-i-e-p?

10 MR. FRANKLIN: Yes. I pronounced it Griep, but  
11 that's the person.

12 THE COURT: They have not been served?

13 MR. FRANKLIN: They have not been served,  
14 Your Honor. We have been awaiting the Court's permission to do  
15 so.

16 THE COURT: What's the status of the structure that  
17 was out in the bay? Has that been removed?

18 MR. FRANKLIN: I will let you know what I know, and  
19 the city's attorney, I'm sure, has more on that. The city  
20 council in the early summer voted to refer to their planning  
21 commission to take some type of action on it with respect to  
22 removing it. Mr. Richards has represented that it will be  
23 taken out, I'm not sure when, but I will let him speak to that.

24 THE COURT: Does the coastal commission have to  
25 weigh in on how it's removed?



1 MR. RICHARDS: Yes. The removal has to be permitted  
2 by the coastal commission. Counsel has made the decision for  
3 it to be removed, and that process -- administrative process is  
4 in the works, which will include an upcoming hearing before the  
5 planning commission I believe in September. I believe  
6 September.

7 THE COURT: September?

8 MR. RICHARDS: So what I would say, Your Honor, it's  
9 moving forward, and it's going to be removed assuming the  
10 coastal commission permits.

11 THE COURT: Yes. I understand the coastal  
12 commission may have to weigh in on the date and how it's  
13 removed and to make sure that it's consistent with the rules  
14 and regulations of the coastal commission.

15 MR. FRANKLIN: Yeah. In terms of my communication  
16 with coastal commission staff, if the rock ford is above the  
17 mean high tide line, then they don't need the Coastal  
18 Commission's permission to remove it. They will have to work  
19 that out directly. If any part falls below the mean high tide  
20 line, we will need coastal commission permission to remove it.

21 But with respect to the other actions like blocking access  
22 to the bluff and those types of things, there's been no permit  
23 by anybody, and certainly the coastal commission would be  
24 unlikely to grant that. That's the other piece of the Coastal  
25 Act claim.

1 THE COURT: Okay. Is there anything else that we  
2 need to discuss? I think everything is covered.

3 MR. FRANKLIN: No, Your Honor. Thank you very much.

4 THE COURT: Anything else?

5 Yes, sir? And would you state your appearance for the  
6 record.

7 MR. FIELDS: Yes. Mark Fields for Angelo Ferrara  
8 and N.F. I think the petition had guardian ad litem, and  
9 that's still under submission.

10 THE COURT: Okay. Let me just direct the clerk to  
11 find that, and that should be -- we should sign that today and  
12 approve it.

13 Anything else?

14 That's it. Thank you.

15 MR. FRANKLIN: Thank you, Your Honor.

16 UNIDENTIFIED COUNSEL: Thank you.

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